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I.
BACKGROUND AND SUMMARY OF COMMENTS

Fred Williamson & Associates, Inc. is a consulting firm that serves rural Local Exchange Carriers (LECs) in Kansas and Oklahoma. Universal Service revenues (previously revenues recovered in access charge rates), is a major portion of the recovery of the high costs of service for these rural LECs and, as had previously occurred with access charge recovery, allows the rural LECs to maintain and promote universal service as required by the Act.

The primary line proposal recommended by the Joint Board is unworkable because any method developed to segregate primary from secondary lines will be subject to confusion, misreporting, manipulation and likely, fraud. No viable method can be devised to police this system to ensure the accurate reporting of primary lines. The Commission should not adopt a set of unenforceable rules for a mechanism as critical as universal service that, like the current intercarrier compensation process (where rates are routinely arbitrated by carriers due to unenforceable Commission rules or lack of enforcement of these rules) will result in misreporting, manipulation and fraud.

Further, the capped restatement and lump sum payment primary line proposals are at odds with the universal service provisions of the Act. If implemented, neither of these proposals will provide sufficient cost recovery support to rural LECs. Consequently, this insufficient level of cost recovery will erode the quality of rural LEC services and cause rural LEC rates for primary and secondary lines to increase to levels that are not just, reasonable and affordable in rural areas, at odds with Sections 254(b)(1) and 254(b)(5) of the Act. Further, these proposals will result in services and rates that are not comparable between rural and urban areas; and because of the loss of cost recovery support revenues,

result in an inability by rural LECs to deploy advanced services for rural customers, at odds with Sections 254(b)(3) and 254(b)(2) of the Act. In sum, the capped restatement and lump sum payment primary line proposals are at odds with the public interest policy that is a fundamental tenant of the Act's universal service provisions for rural areas.

The uncapped hold harmless proposal, if it contemplates continuation of the existing calculation of uncapped support cost recovery levels for all rural LEC lines, would not have the harmful effects of the capped restatement or lump sum payment proposals, and would therefore be in concert with the public interest principal underlying the universal service provisions of the Act.

The Joint Board's major concern, which led to the ill-conceived and unworkable primary line proposals, is the growth in the support funds and expected accelerated growth due to the designation of competitive Eligible Telecommunications Carriers (ETCs) - primarily wireless ETCs. Rather than adopt an unworkable patch, such as the capped primary line proposals, that have unforeseen consequences that will likely lead to the demise of universal service in rural areas, the Commission should fix the source of the problem by adopting rigorous ETC designation criteria (such as those proposed in these Comments) that are competitively and technologically neutral.

II

PRIOR TO ADOPTING OTHER CHANGES, THE COMMISSION SHOULD REEVALUATE ITS PRESUMPTION THAT MULTIPLE ETCs ARE SUSTAINABLE IN RURAL LEC AREAS

A. MULTIPLE ETC DESIGNATIONS CANNOT RATIONALLY BE SUPPORTED IN RURAL AREAS.

Rural markets are easily identified by their low population density and as a result, their lack of multiple competing businesses. These markets have difficulty attracting or supporting even one restaurant or bank or clothing store, etc. It should be clear from an observation of the business economics in these markets that, just as they cannot support other multiple businesses, rural areas cannot economically or rationally support multiple ETCs. The Commission, at odds with the economic realities of these markets and at odds with the requirements of the Act, has misused the ETC designation process to uneconomically incent multiple carriers to enter these low density markets by providing universal service support to all entrants. The purported rational for this uneconomic policy was that competition and choice for consumers would be enhanced and that competitive neutrality required that the same level of support be provided to all applicants. Minimal ETC requirements were established and the Act's public interest analysis requirement for designating multiple ETCs in rural areas was essentially ignored in pursuit of the theory that universal service support could be used to create telecommunications competition in rural markets.

In the short term, the Commission's ETC designation policy does provide consumers with a choice of providers, services and rates. However, it is clear that in the longer term, rural markets cannot economically support multiple ETCs and the resulting choice of providers for consumers, without continued infusions of universal service support causing continued growth of the universal service fund. As one would expect, because support is available, more and more carriers are seeking ETC designation for the same low density rural market areas, even though this is clearly an uneconomic entry decision.¹

¹ Currently in Kansas, Western Wireless has received ETC designation for rural areas and RCC Minnesota and Alltel applications are pending. In Oklahoma, rural ETC applications for Epic Touch, Dobson

Belatedly, the Commission and Joint Board have recognized that one of the effects of this policy of providing support to all rural ETC applicants is that the Universal Service Fund is growing at a rate that some consider could lead to unsustainable levels.²

B. CURRENT ATTEMPTS TO LIMIT ETC DESIGNATIONS BY ADDING ADDITIONAL CRITERIA FOR SUCH DESIGNATIONS IN RURAL AREAS WILL LIKELY FAIL BECAUSE THE CRITERIA OR PROPOSED CRITERIA DO NOT REQUIRE SPECIFIC AND ENFORCEABLE PUBLIC INTEREST ANALYSIS.

As a result of the concern about the growth of the Universal Service Fund due to the designation of multiple ETCs in rural markets,³ the Commission recently modified its policy of using support to create competition in rural markets. In its Virginia Cellular Order the Commission modified the presumption that the alleged benefits of competition alone satisfied the public interest requirement of the Act to be designated as an ETC in rural LEC areas⁴ and placed a number of additional public interest requirements on applicant ETCs. The Commission stated in the Order that the new framework for

Wireless and United States Cellular Corporation are pending. Upon approval of these pending applications, additional carriers may file ETC applications for rural markets in these states. In Oklahoma, however, a recent Order (Included as Attachment 1) may limit ETC designations that are at odds with the provisions of the Act. In the Oklahoma Order, the ALJ required specific public interest criteria and specified the number of minutes that must be provided with universal service offerings and the rate levels that may be charged for universal service offerings.

² Growth of the fund is in reality the result of a number of Commission policies such as including in the fund a requirement for funding facilities for schools, hospitals and libraries; the continued reduction of access charges and transfer of this LEC cost recovery into the fund in order to further lower toll rates; and the funding of multiple ETCs in rural LEC areas.

³ The Commission expressed concern about the growth in universal service funding to competitive ETCs in rural areas in its Virginia Cellular Order and indicated that it was awaiting the Joint Board's recommendation for a framework that would assess the overall impact of competitive ETC designations on the universal service fund. Virginia Cellular Petition for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45, Memorandum Opinion and Order, Released January 22, 2004 (Virginia Cellular Order), paragraph 31.

⁴ The Commission acknowledged that previously the increased value of competition alone may have been the determining factor in the public interest analysis. However, in the Order, the Commission changed this "presumption" and stated that: "We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas." Virginia Cellular Order, paragraph 4.

analyzing whether it is in the public interest to designate an additional ETC in an area served by a rural LEC "...is a fact-specific exercise."⁵ In other words, presumably, an applicant can no longer be designated as an ETC based on vague and general (and unsupported) assertions of competitive benefit.

Unfortunately, the Virginia Cellular Order which purports to provide a more intensive and factually based ETC designation process, in fact, does not accomplish this objective. A generous view of that Order is that it simply is not specific enough to meet the Act's section 214 and 254 requirements. A more cynical view is that the Order is designed to set up rather meaningless requirements which can easily be met, in contravention of the Act, in order to continue to allow the current irrational multiple ETC designations in rural markets. For instance, the Act requires that quality service must be provided throughout the service area. The Virginia Cellular Order, however, allows an ETC applicant to escape this requirement by not adopting any enforceable requirement that an applicant must cure service problems (dead spots, poor quality of service areas, etc.) or even provide service at all if in the applicant's view, the cost of providing service is too high. In a similar vein, the Virginia Cellular Order established tests (the effect of increased competition, the effect of multiple providers on the support funds, etc.) that are unenforceable because of their lack of specificity.

The Joint Board's recommendations for additional ETC designation criteria, like the Commission's Virginia Cellular requirements, are apparently designed to tighten the ETC designation process, particularly in rural LEC areas. However, as discussed in Section III of these Comments, the Joint Board's recommendations, without substantive modification, lack specificity and thus cannot be easily enforced. As a consequence it is

⁵ Virginia Cellular Order, paragraph 28.

unlikely that these additional recommended requirements will stem the uneconomic provision of support to multiple ETCs in rural LEC areas and thus fund growth is likely to continue.

C. THE CURRENT ETC DESIGNATION PROCESS, EVEN WITH THE VIRGINIA CELLULAR MODIFICATIONS AND THE MODIFICATIONS PROPOSED BY THE JOINT BOARD DOES NOT COMPLY WITH THE UNIVERSAL SERVICE PROVISIONS OF THE ACT.

Even with its Virginia Cellular modifications, the Commission has created an ETC designation process that is unlawful and at odds with the express provisions of the Act because it:

- Essentially provides support to all applicants, leading to unsustainable fund growth with the ultimate result that in order to limit fund growth and the burden this places on consumers throughout the nation, insufficient support will be provided to any ETC serving a rural area.
- Is not competitively neutral. Support is provided to new ETC designees without a neutral and impartial public interest evaluation of the need for the support.
- Is not technologically neutral. The Commission's process promotes, uneconomically, competitive entry of multiple wireless providers into rural markets with absolutely no public interest analysis as to whether or not those markets can sustain such entry.
- Makes absolutely no provision for the new entrants to meet the Act's requirement to provide just, reasonable and affordable rate levels.
- Makes no provision for new entrants to provide quality services as required by the Act.

The ETC designation revisions proposed by the Joint Board will likely not remedy this situation unless those recommendations are substantially modified and strengthened to ensure a factual public interest analysis.

D. THE ACT'S REQUIREMENT TO PROVIDE SUFFICIENT FUNDING TO RURAL LEC AREAS CAN ONLY BE MET IF ETC DESIGNATIONS ARE LIMITED AS ALLOWED BY THE ACT.

The Commission's current ETC designation process (including the requirements of the Virginia Cellular Order) does not meet the Act's Section 214 and 254 universal service requirements for rural areas and, before inappropriate actions are taken to limit funding by adopting support only for primary lines or by capping the fund (resulting in insufficient universal service funding), the Commission should initiate an evaluation of, and adopt a rural ETC designation process that complies with the provisions of the Act.

The Commission has not evaluated in a thorough manner whether or not rural, low density, high-cost areas can economically and in the public interest support multiple ETCs. It should be clear however, that because of their low population densities, rural markets will not support multiple ETCs on an economically viable basis without harming the ability of the rural LEC or each ETC competitor to provide universally available service. Rural LECs and rural wireless carriers operate in sparsely populated and high cost to serve areas (see Attachment 2, pages 1 and 2, to these Comments). Attachment 2, page 3, also shows that a substantial amount of federal support⁶ (approximately \$20 per line per month) is required for the rural Kansas and Oklahoma LECs to which FW&A provides consulting services. Is it likely that the loss of lines to multiple ETC

⁶ Additional intrastate support is also required either through an explicit fund as in Kansas or from intrastate access revenues as in Oklahoma.

competitors combined with the possible loss of support to multiple competitors as a result of the Joint Board's primary line recommendations or recommendation to cap the size of the support fund, will result in insufficient funding for all ETCs, at odds with the Act. This will result in substantial increases in rural LEC consumer rates or will substantially harm the ability of the rural LECs to continue to provide and maintain high quality basic and advanced services.⁷

In rural LEC service areas, wireline and wireless services are often complementary, not substitutable services. However, the current Federal ETC designation process, which encourages the designation numerous ETCs (primarily wireless) in rural areas, has, at odds with the public interest, put carriers which should work cooperatively to benefit customers in rural areas, at odds with each other because it is apparent to the carriers, that sufficient support is not available in these low density areas to support multiple ETCs.

A rational ETC designation process (as opposed to the current process) that would benefit consumers and provide sufficient funding to ETCs serving rural markets would be to designate only one wireline ETC (the current rural LEC) and one wireless ETC in each

⁷ The Commission has rejected the proposition that designating an additional ETC into a rural sparsely populated market will cause reductions in investment or service quality or consumer rate increases. At odds with this incorrect notion, a thorough public interest analysis would show that these are valid public interest concerns. There is no evidence that the small rural ILECs are inefficient. Because of scale economics, it is unlikely that the rural LECs will be able to replace, through efficiencies, revenues (local, access and universal service) lost to CMRS ETCs. These lost revenues are essential to a rural LEC's ability to provide quality, universally available service at affordable rate levels and to its ability to continue investing in existing and advanced services and technologies. Evidence demonstrating the rural LECs will experience actual and factual harm, exists in an examination of the market failure and bankruptcies of Global Crossing and WorldCom. These bankruptcies resulted in the loss of access revenues that the rural LECs rely on (as they rely on local and universal service funding revenues) to provide universal service, meet their Carrier of Last Resort (COLR) responsibilities and invest in new facilities and technologies. Because of the loss of revenues, rural LECs delayed or cancelled network upgrades and investments in advanced services. Additionally, because the rural LECs are rate-of-return regulated, in the longer term, this loss of essential revenues may result in increases in access rate levels. A public interest analysis, should evaluate existing competitive failures and their effects on rural LECs and the public in order to ensure that the same mistakes are not repeated by blindly promoting artificially induced and supported competition into a rural market that will likely not support, economically and with sufficient universal service funding, the rural LEC and additional competitive ETCs.

rural service area. The State Commission could determine which wireless ETC is best suited to be an ETC based on the criteria described and recommended in Section III of these Comments. If more than one wireless ETCs has already been designated in rural service areas, the State Commission could review the qualifications of each of the wireless ETCs and select the most qualified. In order to prevent harm to the wireless ETCs not selected, their support could be phased out over a 2 to 3 year period.

The Commission should also evaluate whether additional ETCs (primarily wireless carriers) have a cost-based need for support. It may be that wireless carriers serving rural areas may have high costs but currently the evidence suggests otherwise (see Attachment 3 to these Comments). However, the answer to this question is unknown for specific rural wireless ETC areas because the current irrational ETC designation process provides support to additional ETCs without any needs test. In no other endeavor would rational people provide millions of dollars to private companies without a modicum of evidence that the revenues were required. This largess has brought on the current federal support funding crises and is based on flawed federal policies that must be changed if sustainable levels of support are to be provided to provide and maintain universally available service in rural telecommunications markets as the Act requires. Wireless and wireline technologies are fundamentally different technologies with differing cost structures. It is wrong to believe that competitive neutrality requires exactly the same amount of support to be provided to these differing technologies. In fact, common sense and competitive neutrality would dictate that each technology would receive support based on its costs to provide high quality service to all customers in rural service areas.

To remedy this situation, the Commission should require that the State Commission, upon selecting the most qualified wireless ETC, evaluate its cost-based need for support, taking into account its cost-needs to expand its network into rural dead spots and to provide high quality service in all rural areas where it is designated as an ETC. This process will ensure that both the rural wireline carrier and the selected wireless carrier have sufficient support funding to provide the quality universal services envisioned by the Act.

III.

FACT INTENSIVE AND RIGOROUS ETC DESIGNATION REVIEWS ARE ESSENTIAL TO ENSURE THAT THE PUBLIC INTEREST REQUIREMENTS OF THE ACT ARE MET

If the Commission does not recognize that rural economics dictate that sufficient universal service support can only be provided in rural LEC areas by limiting the number of ETC designations, then it must strengthen both the ETC criteria it adopted in the Virginia Cellular Order and the criteria proposed by the Joint Board. An appropriate set of ETC designation criteria that are fact intensive as well as competitively and technologically neutral, and that assure compliance with the Act's Section 214 and 254 requirements, will minimize uneconomic ETC applications in rural LEC areas. This will minimize growth in universal service funding without the need to adopt plans (limiting support only to primary lines or capping the fund) that will result in insufficient funding for all ETCs and that are therefore unlawful.

A. APPLICANT CLAIMS THAT THERE WILL BE INCREASED COMPETITION AND THAT THE ADVANTAGES OF THE ETC DESIGNATION OUTWEIGH THE DISADVANTAGES MUST BE VERIFIED.

The Recommended Decision of the Joint Board encouraged State Commissions to conduct "...rigorous reviews of ETC applications, including fact-intensive analysis."⁸

The Commission in its Virginia Cellular Order, in concert with this Joint Board recommendation imposed "...a more stringent public interest analysis for ETC designations in rural telephone company service areas...."⁹ and when determining if the public interest is served, placed "...the burden of proof upon the ETC applicant."¹⁰

Typically however, ETC applicants cite vague and general competitive benefits to support their proposed ETC designation and do not meet their burden of proof. For instance, in recent ETC applications in Kansas, the following assertions were all that were provided as public interest support:

- Competition will be promoted.
- Lower prices and higher quality services will be provided.
- The rapid deployment of new technologies will be encouraged and ETC designation will facilitate the provision of advanced services.
- Customers in rural areas will have for the first time, additional telecommunications options, a choice of providers, local usage plans, pricing, service quality, customer service and service availability.
- Service offerings and rate plans that are more competitive and more affordable will be implemented.
- Large expanded calling areas will reduce intraLATA toll charges making service more affordable.

⁸ FCC 04J-1, In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, released February 27, 2004 in CC Docket 96-45, paragraph 11.

⁹ Virginia Cellular Order, paragraph 4.

¹⁰ Id., page 12, paragraph 26.

- Mobility will provide customers with expanded access to emergency and community services.
- Incentives will be created for the rural LEC to be efficient and offer higher quality and new services.

At odds with the Joint Board's recommendation that would require a rigorous fact intensive analysis of these claims, ETC applicants provide absolutely no specific ways or examples nor any objective and verifiable documentation that shows how their designation as ETCs would benefit consumers and the public interest.

Recently, the Commission required in the Virginia Cellular Order that any ETC seeking ETC designation in a rural LEC's service area¹¹ meet, **at a minimum**,¹² the following public interest tests:

- Demonstrate the benefits of increased competitive choice as a result of its ETC designation.¹³
- Demonstrate the unique advantages and disadvantages of the competitor's service offerings.¹⁴

However, the Virginia Cellular Order provided no factual basis for such demonstrations. Carriers seeking ETC designation are still often granted ETC designation based on claims that they are bringing competition to many rural areas for the first time and that no carrier has successfully entered the local exchange market to compete with the rural LECs. The applicants further claim that the primary hindrance to competitive entry is that rural LECs receive high-cost subsidies and that by designating the applicant as eligible for high-cost

¹¹ Id., paragraph 4.

¹² State Commissions are free to impose more stringent requirements or more apply a more detailed fact based analysis in its ETC determinations. As the Commission acknowledges in its Virginia Cellular Order, the Act gives the State Commissions the primary responsibility for performing ETC designations (Virginia Cellular Order, paragraph 6).

¹³ Virginia Cellular Order, paragraph 4.

¹⁴ Id.

support, the Commission will help to level the playing field and give the applicant an opportunity to compete. Disproving these claims is the fact that CMRS carriers have entered and are serving rural LEC markets, bringing all of the purported benefits of competition (choice, new technologies, access to advanced services, lower prices, etc.), to those markets currently, without universal service support. In most rural LEC service areas there are on the average three existing competitive carriers (generally CMRS providers) including the carrier seeking ETC designation. Contrary to their claims, ETC applicants have not found the absence of federal universal service support a hindrance to competitive entry. Providing support to these carriers will not lead to increased competitive choice but simply will result in providing unneeded support to carriers for their existing provision of service.

Further, applicants typically provide no evidence that supports their claims that their ETC designation will result in reduced rates or increased service offerings for customers in rural service areas. The applicants generally do not, as part of their ETC applications, offer any rate reductions on any of their services or packages nor do they offer additional service offerings beyond those already offered.

Finally, the majority of CMRS ETC applicants cite as one of the advantages of their service that their local calling area will be, in almost all cases, substantially larger than the rural LEC local calling areas and assert that this will reduce intraLATA toll charges and make service more affordable for customers. This assertion, if evaluated factually, is wrong. Attachment 4 shows rate plans proposed for support by Alltel and RCC in Kansas. This Attachment shows that Alltel's rates range from \$29.95 for only 300 anytime minutes to a high of \$299.95 for 3000 anytime minutes per month, and RCC's

rates range from a low of \$29.99 for only 300 anytime minutes to a high of \$149.99 for 1000 any time minutes per month. If evaluated factually, most, if not all, of these rate plans are not reasonably priced and affordable universal service offerings as required by the Act or, if reasonably priced, do not offer a sufficient amount of local usage. Even though CMRS providers have larger calling scopes within which there are no toll charges, this is a distinction without meaning because the CMRS provider's customers will very likely incur significant charges for usage above the block of time. For example, Alltel's lowest priced plan is \$29.95 per month for 300 anytime minutes. However, rural LEC customers use, on the average, more than 1000 minutes per month.¹⁵ If only 500 of the 1000 minutes are anytime (non-night and non-weekend minutes) then **the real price a customer in the rural LEC's area pays** for this Alltel calling plan **is \$29.95 plus 45 cents per minute** (the charge for minutes above the block) times 200 minutes (minutes above the 300 minute block) **or \$119.95** (\$29.95 plus \$90.00). Of course, to avoid these per minute charges above the \$29.95 plan, the customer could buy a more expensive, and less affordable calling plan with more block of time minutes, even though the rates for the plans may not be just, reasonable and affordable. Customers may pay the less affordable and higher rates for these wireless services because of mobility, however mobility is not a universal service for which funding is received and does not justify receipt of unneeded support for unaffordable rate levels. Providing support for mobility, a competitive service, is at odds with the requirements of Section 254(k) of the Act.

¹⁵ The local SLU minutes from the last traffic study before the freeze of separations factors (year 2000) for the rural LECs for which FW&A performs studies are approximately 1,100 local minutes per line per month or approximately 36 minutes per day. A similar (year 2000) nationwide average local usage per line (average nationwide dial equipment minutes per loop) from the Commission's Monitoring Report, released December, 2003, Table 8.5, is 57 minutes per day or approximately 1,700 minutes per line per month. (see www.Commission.gov/wcb/iatd/monitor.html)

In sum, a cursory analysis of applicant CMRS provider's service offerings will show that they offer advantages such as expanded local calling and mobility, even though these services are unrelated to universal service. However, a rigorous and fact-based analysis would show that (a) The services are likely not offered at prices that are just, reasonable and affordable if a sufficient number of local minutes to meet typical usage patterns are included, (b) That customers will likely pay higher charges to the CMRS provider for the local expanded local calling area, not lower as CMRS providers claim, and (c) Mobility, while an advantage, is useless in areas where service quality is an issue, and mobility is not a service that is supported by universal service.

As the Joint Board recommends, the ETC applicant should be required to factually demonstrate the validity of the claims they typically make regarding the competitive benefits and advantages of their ETC designation. Such a factual demonstration is essential because the purported public interest benefits of competition (provision of advanced services, higher quality services, customer choice, new technologies, etc.) typically cited by ETC applicants in support of their designation are likely already available in the rural LEC service areas without imposing additional support demands on ratepayers. As a consequence, if ETC designation is granted based on the vague and unsupported claims of the applicants, and without factual verification, unneeded universal service support will be provided, harming ratepayers who must pay for the support and the universal service funding process which is already under pressure. Further, a factual analysis of the advantages of CMRS service offerings (mobility, expanded calling) would demonstrate that these alleged advantages are outweighed by the disadvantages of unaffordably priced services with insufficient levels of included local usage. It is

essential that the Commission clearly indicate that ETC designations will no longer be granted based on unverifiable and vague claims of public benefit, but instead **require** specific and verifiable proof of public benefit.

B. THE COMMISSION MUST ADOPT AN ANALYSIS FRAMEWORK TO FACILITATE A FACT INTENSIVE AND RIGOROUS ETC DESIGNATION ANALYSIS.

The Joint Board recommends that ETC designations be based on a rigorous and factual analysis, but no such analytical framework has been proposed by the Joint Board or required by the Commission in Virginia Cellular to verify that ETC applications will, if approved, lead to increased competition and to determine if the unique advantages of designation outweigh the disadvantages. FW&A suggests that the Commission adopt the following specific and enforceable analytical framework for factually evaluating these issues:

1. Evaluation of the Value of Increased Competition:

- a. In which exchanges/wire centers proposed for ETC designation does the applicant currently provide service? How many lines are served in those exchanges?
- b. Are there existing competitors in the exchanges/wire centers listed in question (a)? If so, list the competitors by exchange/wire center.
- c. In which exchanges/wire centers proposed for ETC designation does the applicant currently not provide service?
- d. Are there existing competitors in the exchanges/wire centers listed in question (c)? If so, list the competitors by exchange/wire center.
- e. Will the applicant provide service with a new technology through which service is not already provided by an existing competitor in any of the proposed exchanges/wire centers in the proposed ETC area? Specify the unique technology.

- f. Will the applicant provide advanced services that are not already provided by an existing competitor in any of the proposed exchanges/wire centers in the proposed ETC area? Specify the advanced services to be provided.
- g. If the applicant currently provides service in the proposed ETC area, will the applicant provide service with rates that are lower than it currently offers service without support? Provide a list of current rates and services included and the proposed rates if ETC designation is granted.

If the applicant intends to provide service in a rural exchange/wire center where it is the only provider other than the rural LEC; and if the applicant offers to provide service with a differing technology than the rural LEC; and will offer differing advanced services than the rural LEC; and if it is currently providing service without support, and will provide service at rates lower than its existing rates, it may, if it meets the other ETC designation criteria, be designated as an ETC in only those exchanges.

2. Evaluation of the Unique Advantages and Disadvantages of the Applicant's Offerings:

- a. Does the applicant's service provide mobility? Specifically, on a detailed map of the proposed designation area, show where mobility is usable by a customer with excellent service quality (exclude dead spots, areas where calls are dropped and areas where there is low signal and/or static).
- b. Within a two year period from the date of the ETC application, provide a map showing where excellent service quality will be provided for mobility. Provide specific construction plans for that two year period supporting the mobility service quality improvements.
- c. Does the applicant provide an expanded local calling area? If so, list all rates applicable to the expanded calling service offering (list block of time rates, minutes included, and the cost per minute for minutes exceeding the block of time, etc.).

3. If the applicant currently provides service, provide by expanded local service offering for the requested ETC area, the average effective rate (basic block of time rate plus charges for minutes above the block of time) paid by the customer for each service offering.
- d. Obtain the average toll usage and average toll rate for rural LEC customers within the proposed ETC expanded calling area. Calculate the average local plus toll charges (for calling within the ETC proposed calling area) for rural LEC customers.
- e. Compare the information from (c) and (d) to determine if, in fact, the applicant's customers receive a benefit from reduced toll charges due to the applicant's expanded calling area.
- f. Does the applicant provide proof (such as a cost allocation manual with supporting costing) that its non-universal services that are bundled into its service prices (mobility, expanded calling, nationwide calling, vertical services, etc.) will not be supported by universal service funding?
- g. Do the services proposed for support by the applicant recover their full costs and thus not require support? It is at odds with the public interest and the Act's requirements to provide support for services in which the rates charged for the services clearly recover their costs.
- h. Are the applicant's service plans affordable as a basic universal service plan and do they include a sufficient number of anytime local calling minutes to allow the customer to avoid the high per-minute charge above the block of time?

If the ETC applicant shows that it will provide excellent service quality within a two year period for 60% of the requested ETC area; and if its effective expanded local calling area customer rates are equal to or lower than those of rural LEC customers (from (e) above); and if it provides proof that it will meet the Act's Section 254(k) requirement not to subsidize non-supported competitive services, then, for those rates that are affordable and

require support, there may be unique advantages for the ETC's services and ETC designation may be granted if the ETC meets the other designation criteria.

C. THE COMMISSION SHOULD REQUIRE THAT POTENTIAL ETCs DEMONSTRATE THE FINANCIAL ABILITY TO PROVIDE SUSTAINED QUALITY SERVICE.

The Joint Board recommended that ETC designation applications be evaluated to determine "...whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area."¹⁶ FW&A supports this recommendation.

Although this issue is critical to the provision of sustained and quality service, it is typically not evaluated in an ETC designation proceeding. However, the information necessary to begin this analysis into an ETC applicant's financial situation (debt, equity, cash flow, investing practices, etc) can typically be found in Securities and Exchange Commission (SEC) and other company reports. Without this review, a carrier may be designated as an ETC and receive support funding, only to exit the market if financial or market failure occurs. Further, Commissions should not allow carriers that may not be financially viable, to seek support funding in an attempt to bolster their financial position. Either of these situations would likely be at odds with the goals of the universal service programs by allowing carriers to use funding to attempt to solve their financial problems rather than to provide high quality universal services to consumers.

Specific information that would be useful to Commissions in this analysis is:

¹⁶ FCC 04J-1, In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, released February 27, 2004 in CC Docket 96-45, paragraph 22.

1. Company construction and expense budget information for the proposed ETC service area. For a carrier that is currently in operation and is seeking ETC designation, the Commission(s) should require the carrier to submit its planned (without support funding) construction and expense budgets and prior year's construction and expense budgets (projects, cost of each project and location of each project) as a baseline. The Commission should then require the carrier to submit the planned construction and expense budgets including projects that will be added if the ETC designation is granted and support funding provided. This will allow the Commission(s) to ensure that a carrier does not simply use support funding to replace capital and expense dollars that would have been spent in the service area and flow this money to its bottom line. This type of shell game will reduce investment in the rural areas and can only be avoided if the Commission(s) have the appropriate information from the applicant carrier. The incentive to engage in this shell game is substantial for a carrier that is in poor financial condition.
2. Financial information to evaluate the financial health of the applicant carrier. Commission(s) should request that the applicant carrier provide, for the past 2 to 3 years its:
 - Debt/Equity ratio.
 - Net Income.
 - Cash Flow.
 - Uses of cash.
 - Etc.

This information will be useful in determining if the company is highly leveraged and is having a problem covering its debt payments and expenses. The carrier's use of cash will indicate if the carrier is using cash generated to acquire new properties or to invest in its current business. Each of these analyses will give the Commission(s) an idea of the health of the carrier and its commitment to providing quality service to its customers.

D. THE COMMISSION SHOULD REQUIRE THAT POTENTIAL ETCs DEMONSTRATE FACTUALLY, THEIR COMMITMENT TO PROVIDE SUSTAINED QUALITY SERVICE THROUGHOUT THE DESIGNATED AREA.

The Joint Board recommended that the Commission adopt guidelines encouraging State Commissions to require competitive ETCs to “...demonstrate their capacity and commitment to provide service throughout the designated service area to all customers who make a reasonable request for service...” and their commitment to be the “...sole ETC in a service area if the incumbent relinquishes its designation.”¹⁷ In concert with the Joint Board’s recommendation, the ability to provide quality service throughout the designated service area was adopted as an ETC requirement by the Commission in its Virginia Cellular Order. As a result of that Order, an ETC must:

- Demonstrate commitments made regarding quality of telephone service provided.¹⁸
- Demonstrate the competitive carrier’s ability to provide the supported services throughout the designated service area within a reasonable time.¹⁹

1. ETC Applicants Should Be Required To Provide Service To All Requesting Customers.

ETC applicants typically provide no objective data or even unequivocal statements that they will provide service to all requesting customers who make a reasonable request for service. Instead, the applicants fall back on a process, allowed by the Virginia Cellular Order, that clearly shows that if the cost is too high, they will avoid providing service to customers. Where service is unavailable, the ETC applicants assert that they will provide service by determining:

¹⁷ Id., paragraph 23.

¹⁸ Virginia Cellular Order, page 3, paragraph 4.

¹⁹ Id.

- (1) If the customer's equipment can be modified;
- (2) If a roof mounted antenna or other equipment can be deployed;
- (3) If adjustments can be made to the nearest cell tower;
- (4) If adjustments can be made to network or customer facilities;
- (5) If resold service can be used;
- (6) If an additional cell site, cell extender or repeater can be employed.

However, the applicants typically indicate that if the cost is too high and if, as a consequence, the applicant decides it will not provide service, that there is no requirement to serve any requesting party and that it will notify the requesting party and file a report with the Commission detailing the number of unfulfilled service requests.

This notion that there is no requirement for a carrier that is receiving universal service support to serve all customers requesting service within a reasonable period of time is at odds with the basis of universal service. Universal service support is intended to be used in high-cost areas to provide quality service to all requesting customers with rates that are just, reasonable and affordable. Carriers receiving support **should not** be allowed to decide on their own which customers they will serve and which customers will not receive service. This would defeat the purpose of universal service and, in effect, allow such a carrier to cream skim by serving only those customers who are low-cost within a designated area.

The Commission should adopt the following specific and enforceable requirements for ETCs:

- a. All ETCs are unequivocally required to provide service to any requesting customer either through the use of their own facilities or through resale, as required by the Act. If the potential ETC is not willing to make this commitment without reservation, its ETC application should be rejected.

- b. Many, if not all State Commissions have line extension requirements in their rules. These requirements should be applied to all ETC.
- c. ETC applicants should be required to file a network infrastructure plan with the State Commission within six months of being designated as eligible to receive Federal (and/or State) funding support. This plan, as a part of universal service protection, should include schedules that would be approved by the State Commission, for the deployment of universal service capabilities in the ETC's entire designated service area. These plans will ensure that a potential ETC is committed to providing service throughout the designated service area and will ensure that dead spots and poor quality of service areas are eliminated. Failure to file an infrastructure plan or failure to meet the commitment dates of such a plan should result in loss of eligibility to receive support funding.

2. Additional ETC Applicants Should Be Required To Assume Carrier Of Last Resort (COLR) Obligations If The Incumbent Relinquishes This Obligation.

The COLR obligation assumed by the incumbent ETC LECs is the basis for assuring that all customers in a high cost to serve area can be provided with quality service at just, reasonable and affordable rates. Without this obligation, there can be no assurance that a network and universal service will be available to all customers in the area. If, as allowed by the Act, an incumbent ETC were to relinquish its designation and its COLR obligation, other ETCs must stand ready to provide service as a COLR. As part of its ETC application, all ETCs should be required to provide an affidavit stating that the carrier will stand ready to assume COLR responsibilities, should the incumbent relinquish this responsibility.

E. ALL ETCs SHOULD BE REQUIRED TO PROVIDE EQUAL ACCESS.

The Joint Board recommended that the Commission require "...competitive ETCs to be prepared to provide equal access if all other ETCs in that service area exercise their rights to relinquish their designations..."²⁰ FW&A agrees with this recommendation and suggests that the Commission should establish, at a minimum, specific and enforceable guidelines that require all ETCs to:

1. Provide an affidavit stating that the requesting ETC carrier will stand ready to provide equal access, should the incumbent relinquish its designation.
2. Provide specific and factual technical information demonstrating that it has the capability and willingness to provide equal access.

FW&A, however strongly suggests that the Commission require all ETCs, including wireless ETCs, provide equal access. FW&A believes the Act's requirements are clear and require that equal access be added to the list of supported services.

1. Section 332(c)(8) gives the Commission the authority to require wireless ETCs to provide equal access if it finds that such a requirement is in the public interest. The excessive per minute rates charged by wireless ETCs for calling beyond the block of time and for long distance calling, in violation of Section 254(b), requires such a finding by the Commission.
2. The public interest and Sections 254(b)(1) and 254(b)(3) of the Act require that equal access be provided by all ETCs, including wireless ETCs in order to ensure that consumers in rural, high-cost and insular areas have access to affordable interexchange services that are similar in price and services to those available in urban areas. Far from being a barrier to efficient competition that would harm consumers and competitive choice, the requirement to provide equal access by

²⁰ FCC 04J-1, In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, released February 27, 2004 in CC Docket 96-45, paragraph 28.

wireless ETCs allows customers, through the operation of market forces, to lower the rates they pay for service.

3. Rural, high-cost and insular customers will benefit from the imposition of an equal access obligation on wireless ETCs through access to lower rates for long distance services. Unless equal access is a requirement for all ETCs, as shown in the following table, wireless ETCs will charge unreasonable originating and terminating rates, extracting monopoly profits from their captive long distance customers, in violation of Section 254(b). Rather than face the “Hobson’s” choice of paying 39 to 45 cents per-minute for additional minutes and long distance charges of 20 to 30 cents per-minute or buying larger blocks of time, if equal access were imposed on wireless ETCs, customers could purchase lower blocks of cellular time and lower their long distance charges substantially by avoiding the originating and terminating charges or the charges for higher blocks of time.

Carrier	Web Site	Basic Rate	Anytime Minutes	Addl. MOU Rate	LD Rate	Roaming
Cellular One	www.cellularone.com *	\$20.00	60	39 cents		59 cents
US Cellular	www.uscc.com	\$25.00	125	40 cents	30 cents	69 cents
AT&T	www.attws.com	\$19.99	45	45 cents	20 cents	69 cents
Sprint	www.sprintpcs.com	\$35.00	300	40 cents	25 cents	50 cents
Verizon	www.verizonwireless.com	\$25.00	125	45 cents	20 cents	69 cents
Nextel	www.nextel.com	\$35.99	100	40 cents	20 cents	NA
* Cellular One a.k.a. Western Wireless						

4. Given the availability of support funding and ability to recover the costs for the equal access use of their network from IXC's, wireless ETCs can easily continue to serve rural areas profitably, even with a requirement to provide equal access service. It is unlikely that localized rural wireless carriers and national wireless carriers that are entering rural markets will abandon their business plans and exit these markets if they seek ETC status and are required to provide equal access service. The imposition of equal access will have no effect on the size of the USF because wireless ETCs may recover their costs via access charges to the IXC's that use their network.
5. A requirement to provide equal access will not hamper the ability of a wireless ETC to offer bundles of any-distance minutes, but does constrain their ability to

extract monopoly profits from captive long distance customers. Implementation of equal access for wireless ETCs will not create regulatory uncertainty.

6. Interexchange competition through equal access was not solely an antitrust remedy nor was interexchange competition for competition's sake the goal of equal access. Instead, the goal of the equal access policy was a universal service goal – reasonable and affordable long distance services, with rates and services comparable to those offered in urban areas.
7. Equal access complies with the Act's definitional principles in Section 254(c), and therefore must be added to the list of supported services:
 - (A) A customer's ability to select and change interexchange carriers through equal access service precludes wireless ETCs from charging high, monopolistic interexchange rate levels to captive customers in rural, insular and high-cost areas. This allows reasonably priced access to educational, public health and public safety services, where those services must be accessed via long distance service.
 - (B) The fact that equal access was mandated as a customer service is as irrelevant as the fact that one party service was mandated by many State Commissions. What is relevant today is that equal access, like one party service, is provided to, used by, or subscribed to, by a substantial majority of residential customers.
 - (C) With the exception of wireless carriers, all LECs are deploying facilities necessary to provide equal access in their telecommunications networks, and thus equal access complies with principle (C).
 - (D) Access to interexchange services in rural, insular and high-cost areas, whose rates are affordable and comparable to those in urban areas is defined by the Act, Section 254(b), to be in the public interest. In compliance with principle (D), such access to reasonably priced long distance services is only possible through equal access.

F. THE COMMISSION SHOULD REQUIRE ETCs TO DEMONSTRATE THE ABILITY TO REMAIN FUNCTIONAL IN EMERGENCIES.

The Joint Board recommended that the Commission adopt guidelines encouraging State Commissions to require Competitive ETCs to “demonstrate the ability to remain functional in emergency situations.”²¹ FW&A agrees with this requirement. Provision of

²¹ Id., paragraph 30.

quality universal services, particularly in rural areas where basic service is a customer's lifeline in emergencies, requires that all ETCs have the ability to remain functional in emergencies. The Commission should establish, at a minimum, specific and enforceable guidelines that require all ETCs to:

1. Provide an affidavit stating that the requesting ETC carrier will remain functional in emergency situations and will continue to provide the supported universal services.
2. Provide specific and factual technical information demonstrating how, and for what duration, it will remain functional.
3. Promptly report any outages, the duration, the cause, and the actions taken to prevent further outages.

G. STATE COMMISSIONS AND THE COMMISSION MUST IMPOSE CONSUMER PROTECTION REQUIREMENTS.

The Joint Board recommended that the Commission adopt a guideline indicating that State Commissions may impose "...customer protection requirements as part of the ETC designation process."²² FW&A not only agrees with this recommendation, but recommends that the Commission adopt specific and enforceable requirements that all ETCs must follow. To implement this guideline, the Commission should, at a minimum, adopt the following quality of service reporting requirements for wireless ETCs²³:

1. Inform customers when purchasing service, and periodically through bill inserts, that complaints about service quality may be made to the State Commission.
2. Report customer complaints by the following categories to the State Commission:
 - (a) Billing and Rate Issues

²² Id., paragraph 31.

²³ Typically, State Commission already have quality of service requirements for wireline carriers.

- (b) Service Quality
 - No Coverage
 - Fast Busy
 - Dropped Calls
 - Poor Sound Quality
- (c) Contract Issues
- (d) Issues Involving Marketing and Advertising
- (e) Equipment Issues

H. GUIDELINES MUST BE ADOPTED THAT SPECIFY THE AMOUNT OF LOCAL USAGE AN ETC MUST PROVIDE AS PART OF ITS UNIVERSAL SERVICE OFFERING.

The Joint Board recommended that the Commission adopt a guideline that State Commissions may consider "...how much local usage ETCs should offer as a condition of federal universal service support."²⁴ As discussed in Section III A, applicant ETC rate plans that offer a minimal number of anytime minutes will, based on rural LEC average customer usage, cause customers to incur significant and potentially unaffordable per-minute charges in addition to the block of time rate. This will force many customers to purchase more costly rate plans, at odds with the goals of universal service. As has been done in Oklahoma (See Attachment 1), the Commission and State Commissions should factually evaluate the level of usage that ETCs should provide to customers as part of each of the applicant ETC's supported universal service offerings. The fact that wireless applicant ETCs have larger calling scopes and a variety of calling plans is only a benefit to consumers in terms of universal service offerings if the Commission and State Commissions ensure that consumers have sufficient local usage so that they do not trade

²⁴ FCC 04J-1, In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, released February 27, 2004 in CC Docket 96-45, paragraph 35.

per-minute toll charges for unreasonably high charges above a block of time rate. The Commission should adopt a specific and enforceable guideline that:

- Additional ETCs must provide at least the average local usage utilized by customers of the incumbent LECs in the state where ETC designation is sought. Information to determine this average local usage by state, based on the last usage studies before the separations freeze of usage factors, is contained in either the Commission's monitoring reports or data underlying those reports.

I. OTHER ETC REQUIREMENTS OR CONSIDERATIONS NOT DISCUSSED BY THE JOINT BOARD IN ITS RECOMMENDATION SHOULD BE ADOPTED BY THE COMMISSION.

1. Minute Of Use Blocking Is Necessary For All Per-Minute Charges, Not Just For Toll Charges.

The Commission requires toll blocking as one of the offered universal services. The purpose for toll blocking is to ensure that a low-income customer does not incur per-minute charges, but still has access to basic local calling. The Commission should require per-minute blocking and not just toll blocking. If the Commission does not take this action, low-income customers may have their toll blocked, but still end up with large and unaffordable bills because of originating local and terminating per-minute charges in excess of the block of time purchased by the customer.

2. Customer Service Agreements Requiring Payment of Termination Penalties Should Not Be Allowed For Universal Service Offerings.

Depending on the service offering, many wireless service plans require customers to sign a 12 to 24 month contract for service. However, if customers are dissatisfied with the quality of the service and wish to terminate that service, an early termination penalty will

be imposed because of the contract. The Commission should consider whether a contractual service requirement with a termination penalty is in the public interest and whether it is appropriate to support such an anti-competitive condition of service with universal service funding.

3. Because Expanded Calling Is Effectively Funded For Wireless Carriers, It Should Be Funded For All ETCs.

In its Order and Order on Reconsideration in CC Docket No. 96-45, released July 14, 2003, paragraph 25, the use of support for expanded area services was rejected by the Commission. However, wireless carriers are allowed to define their own expanded calling areas, but incumbent wireline carriers are limited by the State Commission's determination of their local service and local exchange areas. As a consequence, for wireless calling plans that include expanded calling, federal universal service support is effectively used to support the expanded calling. Competitive neutrality can be maintained only if (1) ETC status were determined entirely without consideration of expanded calling scopes for all ETCs, including wireless ETCs, or (2) If rural LEC ETCs were given the opportunity to offer expanded calling scopes through reliance on universal service support for recovery of their expanded calling costs. Fair competition, unbiased by regulatory action, and competitive neutrality would require that universal service funding either support expanded calling scopes for both technologies, or for neither.

IV.

LIMITING SUPPORT TO A PRIMARY LINE WILL NOT PROVIDE SUFFICIENT SUPPORT AND IS UNNECESSARY IF APPROPRIATE ETC DESIGNATION CRITERIA ARE ESTABLISHED

A. SUMMARY OF THE JOINT BOARD'S RECOMMENDATIONS.

The Joint Board has recommended that high-cost support be limited to a single connection that provides access to the public switched network (primary line) and that high-cost support in areas served by rural carriers be capped on a per-line basis when a competitive carrier is designated as an ETC. The capped support would be adjusted annually for inflation.²⁵ The basis for this recommendation is that it allegedly would:

- Provide for reasonably comparable access in all areas of the nation and is therefore consistent with Section 254(b)(3) of the Act.²⁶
- Provide access to all of the Section 254(c) supported universal services and to advanced and information services.²⁷
- Provide sufficient and predictable, but not excess support as required by Section 254(b)(5) of the Act²⁸ without the need to support multiple connections that is not required by the Act.²⁹
- Protect the sustainability of the fund (the level of support to competitive ETCs, primarily wireless ETCs, has grown dramatically over the past few years).³⁰

²⁵ Id., paragraph 56.

²⁶ Id., paragraph 62.

²⁷ Id.

²⁸ Id., paragraph 64.

²⁹ Id., paragraph 65.

³⁰ Id., paragraph 67.

- Send more appropriate entry signals in rural high-cost areas and would not artificially encourage entry where a rational business cannot be made absent support for all lines.³¹

To implement its recommendation, the Joint Board requested comment on three alternatives:

- a. Restatement – Restate the total current support paid to a rural carrier in terms of first or primary lines.³² Restatement in rural areas would cause the per-line support level to substantially increase, and would result in immediate support losses to rural LECs where the customer does not designate the rural LEC as the primary line.
- b. Lump Sum Payment – Maintain the current level of per-line support only for the primary lines served by a rural carrier and also provide a lump sum payment to the rural carrier to compensate for the loss of support associated with second lines.³³ The Joint Board asserts that this would avoid any immediate effects on the rural LECs, but over the longer term, would result in support losses if the rural LEC was not designated as the primary line by the customer.
- c. Hold Harmless – Maintain the uncapped per-line support for rural LECs, but freeze the per-line support available to competitive ETCs.³⁴ The Joint Board argues that this would discourage competitive carriers from seeking ETC status merely for arbitrage purposes.

³¹ Id., paragraph 69.

³² Id., paragraph 73

³³ Id., paragraph 74.

³⁴ Id., paragraph 75.

Finally, the Joint Board asserts that the benefits of the support cap are that it would ensure that rural carrier LECs lose support for new lines served and for primary lines lost to competitive ETCs because the cap would not allow the rural LEC to recover increases in its embedded costs.³⁵

B. WITH THE EXCEPTION OF THE HOLD HARMLESS PROPOSAL, THE RECOMMENDATIONS OF THE JOINT BOARD DO NOT COMPLY WITH THE ACT'S REQUIREMENTS.

The objective of the Joint Board's recommendation is to limit support to all ETCs in order to ensure the sustainability of the fund by slowing its growth. The Joint Board claims that its recommendations are consistent with the provisions of the Act³⁶ and would limit excess support that might cause unnecessary increases in rates.³⁷ However the Joint Board's recommendations, with the possible exception of the hold harmless option, are not consistent with the Act's provisions for rural LECs serving high-cost areas. What the Joint Board describes as support, is in reality recovery of the high costs rural LECs incur to provide networks that serve all customers in the designated service area. These high rural LECs costs are the costs that can not be recovered in affordable customer rates. This legitimate cost recovery was previously generated via access charges, but is now recovered from the universal service fund. Without this cost recovery, the Act's universal service provisions cannot be met in rural areas served by rural LECs.

³⁵ Id., paragraph 78.

³⁶ Id., paragraph 62.

³⁷ Id. Paragraph 67.

1. Quality Service and Rates Would Be Unsustainable.

Section 254(b)(1) of the Act requires that quality services be available at just, reasonable and affordable rates. The restatement proposal would immediately and over time substantially reduce the support cost recovery (revenues) of the rural LECs and impair their ability to maintain a quality network and their ability to maintain just, reasonable and affordable rate levels. To compensate for lost support cost recovery revenues, the rural LECs would have no alternative but to cut expenses, threatening the maintenance of a quality network or to raise the rates for remaining customers who had designated the rural LEC as the primary line and for all secondary lines. Neither of these options comport with this provision of the Act.

The lump sum proposal would simply delay this result. Support cost recovery would be lost for primary lines lost to competitors and for all new second lines, and because the lump sum is fixed, the revenues necessary to maintain a quality network with just, reasonable and affordable rates would be lost. Again, to compensate for lost support cost recovery revenues, the rural LECs would have no alternative but to cut expenses, threatening the maintenance of a quality network or to raise the rates for remaining customers who had designated the rural LEC as the primary line and for all secondary lines. Again, neither of these options comport with this provision of the Act.

The funding cap proposed by the Joint Board, would make this situation worse and would accelerate the loss of high-cost support recovery by rural LECs. As additional ETCs are authorized by the Commissions in rural areas, the effective per-primary-line cost recovery support for rural LECs would be further reduced, causing additional pressure to

reduce costs and reduce quality or to raise rates to unaffordable levels, at odds with the requirements of the Act.

The hold harmless proposal, if it contemplates continuation of the existing calculation of uncapped support cost recovery levels for all rural LEC lines, would not have the harmful effects of the capped restatement or lump sum payment proposals, and would therefore not be at odds with the Section 254(b)(1) provisions of the Act.

2. Access To Advanced Services Would Be Jeopardized.

Section 254(b)(2) requires that policies to advance universal service must provide for access to advanced telecommunications and information services in all areas of the country, including rural areas. The Joint Board observes that its proposals would preserve access to advanced and information services via the primary line. While the Joint Board's proposals might allow access through the primary line, revenues will not be available to rural LECs to continue to upgrade their networks to provision advanced services (for instance, the fiber and electronics required for high-speed access to the Internet) because of the loss of cost support recovery revenues that will occur with the capped restatement and lump sum payment proposals. Consequently, while the capped restatement and lump sum payment proposals might provide access, the advanced services will not be provided for customers to access through the primary line if these proposals are adopted. Again, these proposals are at odds with the provisions of the Act.

The hold harmless proposal, if it contemplates continuation of the existing calculation of uncapped support cost recovery levels for all rural LEC lines, would not have the harmful effects of the capped restatement or lump sum payment proposals, and would therefore not be at odds with the Section 254(b)(2) provisions of the Act.

3. Access In Rural And High-Cost Areas And Urban Areas Will Not Be Comparable.

Section 254(b)(3) of the Act requires that access to rates and services (basic and advanced) be reasonably comparable for customers in rural and urban areas. As discussed previously, because of the cost recovery support losses that will be faced by rural LECs if the capped restatement or lump sum payment proposals are adopted, this comparability will be lost. As rural LECs lose their cost recovery support revenues, quality services will deteriorate, rates will rise and advanced services will not be provided. As a consequence, rural customers will no longer have access to services and rates comparable to services and rates in urban areas, at odds with the provisions of the Act.

The hold harmless proposal, if it contemplates continuation of the existing calculation of uncapped support cost recovery levels for all rural LEC lines, would not have the harmful effects of the capped restatement or lump sum payment proposals, and would therefore not be at odds with the Section 254(b)(3) provisions of the Act.

4. Specific, Predictable And Sufficient Support Will Not Be Provided.

Section 254(b)(5) of the Act requires that universal service mechanisms provide specific, predictable and sufficient support to advance and preserve universal service. As discussed previously, the uncapped revenues currently received by rural LECs are to recover their high network costs, previously recovered via access rates. The Joint Board capped restatement or lump sum payment proposals will not provide sufficient revenue to continue to recover the high costs of the rural LEC's networks. Because of the loss of cost recovery support or revenues that these proposals will cause, rural service quality will deteriorate, rates will increase for both primary and secondary lines and advanced

services will not be provided. As a consequence, sufficient revenues will not be provided to advance and preserve universal service, at odds with the requirement of Section 254(b)(5) of the Act.

The hold harmless proposal, if it contemplates continuation of the existing calculation of uncapped support cost recovery levels for all rural LEC lines, would not have the harmful effects of the capped restatement or lump sum payment proposals, and would therefore not be at odds with the Section 254(b)(5) provisions of the Act.

5. Adoption Of The Joint Board's Proposals Are At Odds With The Public Interest.

Underlying the Act's Section 214 and 254 provisions is the basic premise the universal service provided by rural LECs in rural high-cost areas is in the public interest. If this were not the premise, there would have been no need for the requirement in Section 214(e)(2) of the Act to demonstrate that the addition of additional ETCs in rural areas is in the public interest. Based on this public interest standard, the Act established provisions to ensure that sufficient and predictable cost recovery support would be provided to rural LECs serving these high-cost areas, to enable them to provide quality services at just, reasonable and affordable rates and to provide access to advanced services that are comparable to rates and services provided in urban areas. This basic public interest premise of the Act for rural LECs will be violated and rendered inoperative, to the detriment of rural customers, if the capped restatement or lump sum payment proposals of the Joint Board are adopted.

The hold harmless proposal, if it contemplates continuation of the existing calculation of uncapped support cost recovery levels for all rural LEC lines, would not have the harmful effects of the capped restatement or lump sum payment proposals, and would therefore be

in concert with the public interest principal underlying the universal service provisions of the Act.

C. AT ODDS WITH THE JOINT BOARD'S COMMENTS, THE PRIMARY LINE LIMITATION IS UNWORKABLE.

The Joint Board states that it rejects "...arguments that a primary-line limitation is inherently unworkable."³⁸ The Joint Board seems to believe that distinguishing between primary and secondary lines can be accomplished accurately.³⁹ Apparently, this Joint Board belief, which is the basis for its primary line recommendation, is not based on factual information. The Joint Board admits that the record is not sufficient to resolve how to designate primary lines,⁴⁰ and recommends that the Commission develop the record on how to (a) Implement this proposal and on how to (b) Allow customers to designate an ETC's service as primary.⁴¹

The Joint Board is mistaken. A significant and substantive record was built on the primary line issue a number of years ago in a prior Joint Board/Commission proceeding in CC Docket Nos. 78-72 and 80-286. That record demonstrated that there was no feasible or workable way to develop rules to segregate primary from secondary lines. Any method adopted would be subject to confusion, misreporting, manipulation and likely, fraud. As an example, in many residences, there are multiple households (for instance roommates) with multiple phones on a single bill. How will the Commission rationally distinguish whether or not the multiple reported primary lines are appropriate and reflect this type of living arrangement; or are an inaccurate reporting of primary and

³⁸ Id., paragraph 81.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id., paragraphs 81 and 82.

secondary lines by a household? How will the Commission determine if a household is inaccurately reporting primary lines for multiple ETCs serving the household (for instance, for both a wireline and wireless connection)? How will the Commission determine if multiple phones on a wireline or a wireless bill are all primary, or primary and secondary?

If the Commission were to find an accurate way to answer the prior questions, a resourceful ETC will find ways to beat the reporting system if enough money is involved. For instance, a customer's bill for primary and secondary lines can simply be split up into multiple bills. Are these lines now all primary lines? How could the Commission prove otherwise? No doubt, as the Commission has experienced with other carriers, choices left to carriers or customers that cannot be policed by the Commissions, will lead to misreporting, abuse and fraud by some carriers.

Which Commission or entity will police the primary line reporting system to evaluate and audit if lines are properly reported? Will a massive national database need to be built to match customer names and bills with reported lines? Where will the money come from to build this database?

As the prior 78-72 and 80-286 Joint Board apparently decided, the process of segregating primary from secondary lines is unworkable. The current system of supporting all lines (which is difficult enough to police) stems in part from that Joint Board's decision not to adopt a primary line support mechanism – a mechanism that is administratively unworkable.

Finally, customer selection of the primary line will, at odds with the beliefs of the Joint Board,⁴² cause carriers to expend time and money finding ways to induce customers to select their service as the primary line. This will mean that the Commission would, if it adopts the primary line mechanism, set up a system that promotes uneconomic expenditures of time and resources in an effort to gain support revenues. Resources that could have been spent maintaining and providing universal and advanced services will be wasted on an uneconomic and Commission induced war to get customers to designate a particular ETC's service as primary.

V.

CONCLUSION

The primary line proposal recommended by the Joint Board is unworkable because any method developed to segregate primary from secondary lines will be subject to confusion, misreporting, manipulation and likely, fraud. No viable method can be devised to police this system to ensure accurate reporting of primary lines. The Commission should not adopt a set of unenforceable rules for a mechanism as critical as universal service that, like the current intercarrier compensation process (where rates are routinely arbitrated by carriers due to unenforceable Commission rules or lack of enforcement of these rules) will result in misreporting, manipulation and fraud.

Further, the capped restatement and lump sum payment primary line proposals are at odds with the universal service provisions of the Act. If implemented, either of these proposals will provide insufficient cost recovery support to rural LECs and thus will erode the quality of rural LEC services and cause rural LEC rates for primary and

⁴² Id, paragraph 82.

secondary lines to increase to levels that are not just, reasonable and affordable in rural areas, at odds with Sections 254(b)(1) and 254(b)(5) of the Act. Further, these proposals will result in services and rates that are not comparable between rural and urban areas; and because of the loss of cost recovery support revenues, result in an inability by rural LECs to deploy advanced services for rural customers, at odds with Sections 254(b)(3) and 254(b)(2) of the Act. In sum, the capped restatement and lump sum payment primary line proposals are fundamentally at odds with the public interest policy that is a fundamental tenant of the Act's universal service provisions for rural areas.

The uncapped hold harmless proposal, if it contemplated continuation of the existing calculation of uncapped support cost recovery levels for all rural LEC lines, would not have the harmful effects of the capped restatement or lump sum payment proposals, and would therefore be in concert with the public interest principal underlying the universal service provisions of the Act.

The Joint Board's major concern that led to the ill-conceived and unworkable primary line proposals, is the growth in the support funds and expected accelerated growth due to the designation of competitive ETCs (primarily wireless ETCs). Rather than adopt an unworkable patch such as the capped primary line proposals, that has unforeseen consequences that will likely lead to the demise of universal service in rural areas, the Commission should fix the source of the problem by adopting rigorous ETC designation criteria (such as those proposed in these Comments) that are competitively and technologically neutral.

Respectfully submitted by,

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